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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT C. HARRIS

Appeal 2009-011363
Application 09/683,599
Technology Center 2400

Decided: May 4, 2010

Before ROBERT E. NAPPI, ELENI MANTIS MERCADER, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-20. Oral argument was held on April 20, 2010. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellant's invention relates to

[a] system of searching an image database. An image database is associated with an on-line merchant, and each of the images in the database are [sic: is] associated with items which can be purchased. Image information is entered, and that image to information is used to search the items in the database.

(Abstract).

Independent claim 1 is illustrative.¹ It reads as follows with the disputed language emphasized:

1. A system, comprising:
a client which allows entry of image information; and
a server, including a database associated with the server, said server connected to said client to receive said image information and using said image information to search said database associated with the server *for items to be purchased* which meet criteria specified in said image information and forming search results based on said image information.

Claims 1-3, 5-11, and 13-20 stand rejected under 35 U.S.C. § 103(a) as obvious over US Patent 6,445,822 B1 [Crill] in view of US Patent 7,007,076 B1 [Hess].

¹ Appellant argues claims 1, 2, 5-8, 11, 16, 18, and 20 together as a group. See App. Br. 6-16. Accordingly, we select independent claim 1 as representative. See 37 C.F.R. § 41.37(c)(1)(vii).

Claims 4 and 12 stand rejected under 35 U.S.C. § 103(a) as obvious over Crill in view of Hess and US Patent 5,893,095 [Jain].²

The Examiner finds that Crill is directed towards a system for searching image databases (Ans. 3)³ and that it discloses every limitation of claim 1 except that “it fails to explicitly teach a sever [sic: server] for items to be purchased” (Ans. 4). The Examiner combines Hess to show that non-image-based searches of online commerce sites were known (Ans. 4).

Appellant “readily admit[s] that the concept of searching an image database for images is [sic: was] well-known in the art” (App. Br. 7). Appellant also acknowledges that Hess discloses an online trading environment that uses conventional text searching of a database that has images (App. Br. 8). Appellant asserts, though, that (1) Crill “does not disclose any reason why one might want to use [image-based-search] technology” to “obtain images of items for sale, based on the image matching” (App. Br. 7); (2) Hess does not teach that the images disclosed in that database may be searched using an image search technique (App. Br. 8); (3) “[n]owhere is there any teaching or suggestion of the claimed feature that requires ‘using said image information to search said database associated with the server for items to be purchased which meet criteria specified in said image information’” (App. Br. 11 (quoting claim 1)); and (4) “recognition of the source of this problem is an important part of what is

² The Examiner initially asserts that claims 1-20 are all rejected over Crill in view of Hess alone (Ans. 3), but subsequently clarifies that claims 4 and 12 are, in fact, rejected over Crill in view of Hess and Jain (Ans. 5).

³ Rather than repeat the arguments of Appellant or the Examiner, we refer to the following documents for their respective details: Appeal Brief (App. Br.) filed October 19, 2007; the Examiner’s Answer (Ans.) mailed January 8, 2008; and the Reply Brief (Reply Br.) filed March 14, 2008.

patentable in the present system, and there is not one word of the source of this problem in either Crill or Hess” (App. Br. 11).

ISSUE

Does the cited prior art further teach or suggest using conventional image-based search techniques to search for images in an online database of items that are “to be purchased” as recited in claim 1?

FINDINGS OF FACT

The record supports the following Findings of Fact by a preponderance of the evidence:

Crill

1. Many companies use or develop databases of images or graphic files. Such databases may be centrally or remotely located. For example, a company may keep or maintain a database of schematics or other images relating to the manufacture, assembly, and maintenance of *products the company develops and sells. As another example, a company may store pictures or images of artwork, posters, paintings, antiques, real property, etc. that the company has available for sale or rent.* Such databases of images are often searched periodically by people who are looking for a specific image or who are attempting to find matches between an image they may create or provide and images in the database. A user may access the database servers from a computer, terminal, or other client device, which can be locally or directly connected to the database servers or which can be remotely connected to the database servers via a local or wide area computer or other communications network. *Often times, however, limitations on the ability to quickly search through the image databases or to efficiently compare images provided by the user to images in the image databases significantly reduce the utility of the image databases.*

Col. 1, ll. 25-46 (emphases added).

2. Unfortunately, comparing two images or two digital files can be a very time consuming process. Therefore, despite the state of the art in image and pattern recognition, there remains a need for an efficient apparatus and method to search for one or more candidate images and to compare such candidate images to one or more reference images. Preferably, the image comparison will recognize and find patterns present in candidate images regardless of the scale, shape, rotation, or translation of the patterns in the candidate images. In addition, the apparatus and method will preferably allow candidate images to be retrieved from centralized and/or distributed databases or repositories of images for comparison to reference images.

Col. 2, ll. 21-33.

3. To create reference images during the step 102, a user might combine drawing with conventional software tools that are well known in the art. For example, drawing a circle by first clicking on a drawing icon representing a circle and then “clicking and dragging” a computer mouse so as to change the size of the circle. A user might also create a reference image by starting with an image having content similar to that sought in a candidate image and cropping the image so that the superfluous content is omitted from the overall image. The user might logically combine multiple image elements; e.g., (duck) AND (pond) AND (cloudy sky), by selecting such elements of images and using logical or boolean functions or operators to combine the elements into a single image.

Col. 7, ll. 17-30.

ANALYSIS

I.

Appellant’s arguments are not persuasive. Crill itself discloses every limitation of claim 1, specifically including disclosing that the images may

be of items to be purchased. *See* Facts 1-2. As such, while the further combination of Hess may not have been necessary to establish a *prima facie* case of the claim's unpatentability, we see nothing wrong with further relying on Hess since Crill also provides motivation to combine the teachings of Hess. *See In re Meyer*, 599 F.2d 1026, 1031 (CCPA 1979) (noting that obviousness rejections can be based on references that happen to anticipate the claimed subject matter). For the foregoing reasons, Appellant has not persuaded us of error in the Examiner's obviousness rejection of representative claim 1.

Appellant similarly argues (App. Br. 15-16) that claims 9, 10, and 17 recite price information associated with the search results, but that "the prior art has not one word about returning search results from an image search, including price information" (App. Br. 15). This argument is likewise unpersuasive. The fact that Crill's image search database is for items to be purchased or rented (e.g., real property) (*see* Fact 1) either implies, or at the very least suggests, that price information is, or may be, also included in the database.

Accordingly, we will sustain the Examiner's rejection of claim 1; of claims 2, 5-8, 11, 16, 18, and 20, which were not separately argued; and of claims 9, 10, and 17 for the reasons set forth above.

II.

Claim 3 further sets forth that a parameter "associated with said image information includes exclusion information to exclude from said search results, and said server forms said search results which do not include said

exclusion information.” Claims 13, 14, and 19 also recite “exclusion information.”

Appellant argues that the Examiner is improperly reading this limitation on Crill’s disclosed cropping function, and that Crill does not disclose exclusion information. We agree with Appellant that the cropping function doesn’t constitute including “exclusion information.” However, Appellant’s further argument – that Crill fails to disclose the feature of including exclusion information – is unpersuasive.

Crill discloses that image searches may be performed with Boolean operators (Fact 3). While Crill’s only express example is a search using the Boolean “AND” operator, we see nothing to indicate that only the “AND” operator was envisioned. Rather, we understand Crill as disclosing that any Boolean operator may be used.

Furthermore, the Boolean operators are of a relatively small and finite set: AND, NAND (not AND), OR, NOR (not OR), XOR (exclusive OR), and NOT. As such, we find Crill’s express disclosure – that Boolean operators may be employed – to be synonymous with stating, or at the least suggesting, that the NOT operator may be employed. That is, we find that Crill either discloses or at least suggests including exclusion information.

III.

Claim 4 further sets forth that one of the image information setting parameters “includes a selection of a more important image portion, which is more important than other image portions, and said client forms search results which are weighted according to said more important image portion.” Method claim 12 sets forth similar language. Appellant argues that none of

Crill, Hess, or Jain discloses selecting a more important image portion as claimed (App. Br. 14).

This argument is not persuasive. As Appellant acknowledges (App. Br. 13), Crill discloses a cropping function that takes information out of the image. “Crill may crop the image, but the cropping of the image is not entering exclusion information to exclude from the search results . . .” (*id.*). That is, when an image is cropped in order to perform an image search, the retained portion of the cropped image must necessarily be present in a candidate image, while the cropped-out portion doesn’t necessarily have to be present in the candidate image. As such, the portion retained within Crill’s cropped image reads on image information that is “more important than other image portions” as recited in claim 4. That is, the client forms search results which are weighted according to the retained portion of the cropped image relative to the cropped-out portion.

IV.

Claim 15 further recites, “wherein said entering image information includes entering an initial image, and entering size information associated with said initial image, wherein said search results are based on said size information.” Appellant argues that although Crill “simply teaches that a user can draw a circle by first clicking on a drawing icon representing a circle and then clicking and dragging the computer mouse to change its size” (App. Br. 15; *see also* Fact 3), “[t]here is not one word about entering size information, much less searching Crill’s database or any other database based on such size information” (App. Br. 15).

This argument is not persuasive. It seems implicit why one would change the size of an object that has been selected to be searched: because the size of that object is somehow relevant to the search. For example, the size of that particular object in relation to a second object may be relevant. Appellant has not provided any evidence or rationale for why else one would actively undertake to change the size of an object prior to using it as part of an image search. Accordingly, we find that Crill further discloses “entering size information associated with said initial image, wherein said search results are based on said size information” as required by claim 15.

DECISION

We sustain the Examiner’s rejections with respect to all pending claims on appeal. Therefore, the Examiner’s decision rejecting claims 1-20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

babc

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